

25 JUL 1960

CHAL-1091

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Amendment No. 4

Contract No. HF-32-27

THIS CONTRACT AMENDMENT OF SETTLEMENT, entered into this 19 day of July 1960 between the UNITED STATES OF AMERICA, hereinafter called "the GOVERNMENT", represented by the Contracting Officer executing this contract and The Perkin-Elmer Corporation, a corporation organized and existing under the Laws of the State of New York, hereinafter called "the Contractor", WITNESSETH THAT:

WHEREAS, the Contractor and the Government have entered into Contract No. HF-32-27 under date of 26 June 1958 which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

WHEREAS, the Termination clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

WHEREAS, by notice of termination dated 16 December 1958 the Government advised the Contractor of the complete termination of the contract for the convenience of the Government; and

WHEREAS, as used herein, the following terms shall have the meanings hereinafter set forth:

The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract but shall not include any facilities, materials, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property as defined below.

(1) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(11) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "subcontract" means any contract as defined in ASPR 1-201.6 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

NOW THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE 1. The Contractor certifies that all contract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this agreement.

ARTICLE 2. a. The Contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (1) that all of its subcontract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts and (11) that the subcontractor has received from each of the immediate subcontractors whose claim was included in its claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of its rights relating thereto.

ARTICLE 3. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) all such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such items do not include any items reasonably usable, without loss to the Contractor, on its other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of its termination inventory schedules and the date of this agreement.

ARTICLE 4. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of its immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by subcontractors.

ARTICLE 5. a. The Contractor has received the sum of [REDACTED] on account of work and services performed, or articles delivered, under the contract prior to the effective date of termination. The Government as part of this negotiated settlement hereby confirms and acknowledges the right of the Contractor, subject to the provisions of Article 6 hereof, to retain such sum heretofore paid and agrees that such sum constitutes a portion of the total amount to which the Contractor is entitled in complete and final settlement of the contract.

b. In addition, upon execution of this agreement the Government agrees to pay to the Contractor or its assignee, upon presentation of properly certified invoices or vouchers, the sum of [REDACTED] arrived at by deducting from the sum of [REDACTED] (1) the amount of [REDACTED] representing all unliquidated partial of progress payments previously made on account to the Contractor or its assignee and all unliquidated advance payments and (2) the amount of \$0 representing all applicable property disposal credits and (3) the amount of \$0 representing all other amounts due the Government under this contract except as hereinafter provided in Article 6. Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the complete termination of work under the contract and of all other claims and liabilities of the Contractor and the Government under the contract, except as hereinafter provided in Article 6.

ARTICLE 6. Notwithstanding any other provision of this agreement the following rights and liabilities of the parties under the contract are hereby reserved:

1. Claims by the Contractor against the Government whose existence is unknown, based upon responsibility of the Contractor to third parties and which involve costs reimbursable under the contract.

2. Claims by the Government against the Contractor which are based upon refunds, rebates, credits, or other accounts not now known to the Government, together with interest thereon, now due or which may become due the Contractor from third parties to the extent that such amounts arise out of transactions for which reimbursement has been made to the Contractor under the contract. Any such amounts which may hereafter become due to the Contractor from any third party or other source shall be paid to the Government within 30 days after receipt by the Contractor. Interest at 6 percent per annum shall accrue and shall be paid to the Government on any such accounts as remain unpaid after the 30 day period.

3. All rights and liabilities of the parties arising under the contract articles if any, or otherwise which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

4. All rights and liabilities of the parties under agreements with respect to the future care and disposition by the Contractor of Government-owned property remaining in its custody.

5. All rights and liabilities of the parties under the contract with respect to any contract termination inventory stored for the Government pursuant to Article 1 hereof.

6. All rights and liabilities of the parties under the contract with respect to any and all Government property, furnished to or acquired by the Contractor for the performance of this contract.

7. All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit."

ARTICLE 7. Notwithstanding any other provision of this agreement, final payment of the amount set forth in Article 5, Paragraph b. shall be withheld pending receipt from the Contractor by the Contracting Office of a duly executed copy of Final Release and a certification that all contract termination inventory has been duly accounted for pursuant to Articles 1, 2, and 3 of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 4 to Contract No. XP-32-27, as of the day and year first above written.

THE UNITED STATES OF AMERICA

STATINTL

Contracting Officer

(Official Title)

(Contractor)

STATINTL

Treasurer-Comptroller

(Official Title)

Main Avenue

Norwalk, Connecticut

(Business Address)